

# **EXHIBIT 1**

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS

Marcia M. Waldron  
Clerk

FOR THE THIRD CIRCUIT  
21400 United States Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

Telephone  
215-597-2995

www.ca3.uscourts.gov

October 29, 2007

Gregory A. Inskip, Esq.  
Potter, Anderson & Corroon  
1313 North Market Street  
6th Floor, P.O. Box 951  
Wilmington, DE 19801

Patricia Rose Uhlenbrock, Esq.  
Morris James  
500 Delaware Avenue  
P.O. Box 2306, Suite 1500  
Wilmington, DE 19899

RE: Docket No. 07-4160  
Inst Disabilities vs. Wal Mart Stores Inc  
D. C. Civil No. 05-cv-00176

Dear Counsel:

This will advise you that the within appeal will be submitted to a panel of this Court for possible dismissal.

It appears that the notice of appeal is taken from an order which is not final within the meaning of 28 U.S.C. section 1291 and which is not otherwise appealable at this time.

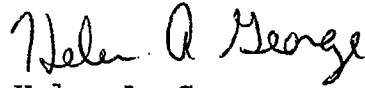
It appears that the amount of damages has not been quantified by the Court.

The Court DIRECTS that all parties respond IN WRITING (original and 3 copies with a certificate of service). The responses are to be RECEIVED in the Clerk's Office not later than 11/8/07. The responses may be in either pleading or informal letter form.

If counsel fail to respond, the matter will be submitted to the Court without the requested response(s). You are advised that failure to respond may result in the imposition of sanctions by the Court. Parties who do not intend to participate in the appeal are directed to so notify the Court in writing (original and 3 copies with a certificate of service).

This notice will not stay the time for making any filings or any submissions required by the rules of this Court nor will it stay entry of a briefing schedule.

Very truly yours,  
Marcia M. Waldron  
Clerk

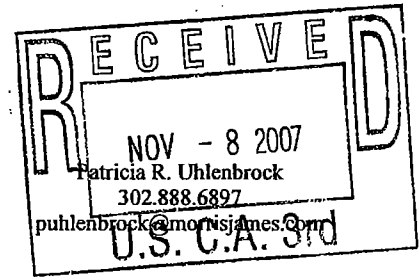


By: Helen A. George  
Motions Attorney

HAG:cmh

## **EXHIBIT 2**

**Morris James** LLP



November 8, 2007

**VIA HAND DELIVERY**

United States Court of Appeals  
for the Third Circuit  
21400 United States Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

Re: Docket No. 07-4160  
*Institute for Disabilities Research and Training, Inc.*  
*v. Wal-Mart Stores, Inc.*  
District Court Case No. 1:05-cv-00176

To the Honorable Judges of the United States Court  
of Appeals for the Third Circuit:

Pursuant to the Court's October 29, 2007 Letter Order directing the parties to respond to the finality of the Judgment from which the Order of Appeal was taken by Wal-Mart Stores, Inc. ("Wal-Mart"), the Institute for Disabilities Research and Training, Inc. ("IDRT") responds as follows:

1. In the instant case Plaintiff/Appellee, IDRT, filed a Complaint for Breach of Contract against Defendant/Appellant Wal-Mart in the United States District Court for the District of Delaware ("District Court"), asserting Breach of Contract between the parties and monetary damages of \$174,299.57 plus contract interest as a result thereof. (§57-59 and *ad damnum* clause.)
2. The parties submitted a Pre-Trial Order which narrowed the asserted basis of the breach of the contract.
3. On April 27, 2006 a bench trial was held before the Honorable Gregory Sleet.

Morris James<sub>LLP</sub>

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for the Third Circuit  
November 8, 2007  
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4. At the trial, IDRT submitted Exhibits and testimonial evidence in support of its Complaint and the assertion that Wal-Mart was in breach of contract and the amount due resulting therefrom.
5. At trial, Wal-Mart submitted exhibits and testimonial evidence in support of its contention that there was no asserted breach.
6. Wal-Mart asserted no money was due to IDRT because it was not in breach of the Contract as asserted by IDRT, and Wal-Mart filed a Counterclaim requesting money damage against IDRT. That claim may be resolved by a stipulation between the parties that was entered on the record and included in the Memorandum and Order later issued by the District Court.
7. At the conclusion of the bench trial, the District Court ordered the parties to submit proposed Findings of Facts and Conclusions of Law on May 31, 2006, and each did so.
8. The matter was held *sub curia* until the District Court issued a Memorandum and Order of September 25, 2007, along with a Judgment.
9. The Judgment, based upon the Memorandum and Order, concluded that Wal-Mart was in breach of contract as contended by IDRT and was responsible for payment of additional amount known as the "Phase II Contract Price," less an amount for the aforesaid stipulated credit.
10. After receiving the District Court's Memorandum and Order, and Judgment, the parties discussed the fact that the Judgment did not contain a monetary amount and IDRT presented to Wal-Mart the monetary amount that would account for the Phase II Contract Price and agreed stipulated credit.
11. Wal-Mart did not respond to IDRT's proffered monetary amount and on the 30<sup>th</sup> day after the District Court's Judgment, October 25, 2007, Wal-Mart filed the instant Order of Appeal.
12. On the 30<sup>th</sup> day following Judgment, on October 25, 2007, IDRT filed a Motion to Amend or Alter Judgment pursuant to Federal Rule of Civil Procedure 59(e) and a Motion for Enlargement of Time to file the said Motion with supporting Affidavit (copies attached as *Exhibit 1*).
13. The aforesaid Motion was filed in the alternative under FRCP 60(b); that is, to grant relief from the Judgment of September 25, 2007, specifically, to amend it to include a monetary amount of judgment (*Exhibit 1*).

Morris James<sub>LLP</sub>

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14. Additionally, IDRT filed a Bill of Costs on October 25, 2007 and a proposed Amended Judgment that included a monetary amount of Judgment and the costs reflected in the Bill of Costs. (Bill of Costs and Proposed Judgment attached as *Exhibits 2 and 3*, respectively.)
15. The essence of IDRT's Motion was that the District Court's September 25, 2007 Judgment was incomplete in that it did not include a monetary amount of damages as had been requested in the Complaint, but was included in the evidence presented to the District Court.
16. In its Motion, IDRT did not request the taking of additional evidence because evidence of the amount of damages had already been included.
17. As the filing of this Response to this Court's Directive of October 29, 2007, Wal-Mart has not responded to the Motion filed by IDRT in the District Court and the District Court has taken no action thereon.
18. Under FRCP 60(b), the District Court has continuing jurisdiction to grant relief of its Judgment to quantify the amount of damages pursuant to the evidence that had been submitted. (See *U.S. v. Contents of Account Nos. 3034504504 and 144-07143 at Merrill, Lynch Pierce, Fenner and Smith*, 971 F.2d 974, 987-988 (3<sup>rd</sup> Cir. 1992).)
19. Alternatively, the case may be remanded to the District Court with the issuance of a Writ of Mandate under the "All Writs Act" and the Court's supervisory authority over district courts; and the District Court ordered to complete its rulings on the matters before it. *La Buy v. Howes Leather Company*, 352 US 249, 257-260 (1954); cited in *In Re Grand Jury Proceedings*, 507 F.2d 963, 971 (3<sup>rd</sup> Cir. 1975). Compare *Western Electric Co. v. Stern*, 544 F.2d 1196, 1200 (3<sup>rd</sup> Cir. 1976).

WHEREFORE, IDRT respectfully requests the appeal be either dismissed or remanded, with direction or mandate to the District Court to complete its consideration of the matter before it and include in the judgment the amount of monetary damages.

Respectfully submitted,



Patricia R. Uhlenbrock (Del. Bar ID #4011)

PRU/dar

Attachments

cc: Gregory A. Inskip, Esquire (via Hand Delivery)  
Harvey Greenberg, Esquire (via E-mail)

## **EXHIBIT 3**





1313 North Market Street  
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Gregory A. Inskip  
Partner  
Attorney at Law  
ginskip@potteranderson.com  
302 984-6016 Direct Phone  
302 778-6016 Fax

November 7, 2007

**BY FEDERAL EXPRESS**

Office of the Clerk  
United States Court of Appeals  
for the Third Circuit  
21400 United States Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

ATTN: HELEN A. GEORGE, ESQUIRE, MOTIONS ATTORNEY

Re: Docket No. 07-4160  
*Institute for Disabilities Research and Training, Inc. v. Wal-Mart Stores, Inc.*  
D.C. Civil No. 05-cv-00176

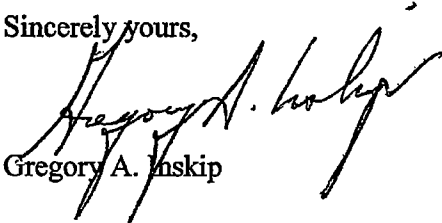
Dear Ms. George:

I respond on behalf of appellant Wal-Mart Stores, Inc. ("Wal-Mart") to your letter of October 29, 2007.

Wal-Mart does not oppose dismissal of the appeal on the grounds stated in your letter, namely that the judgment below is not final and, therefore, is not appealable at this time.

Wal-Mart filed a Notice of Appeal because the District Court entered a Judgment, along with electronic notification, that the case was closed (*see* enclosures).

Sincerely yours,

  
Gregory A. Inskip

GAI:ksk:829513

Enclosures

cc: Patricia R. Uhlenbrock, Esq. (w/encls.; by mail)

**Inskip, Gregory A.**

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**From:** ded\_nefreply@ded.uscourts.gov

**Sent:** Tuesday, September 25, 2007 4:47 PM

**To:** ded\_ecf@ded.uscourts.gov

**Subject:** Activity in Case 1:05-cv-00176-GMS Institute for Disabilities Research and Training Inc. v. Wal-Mart Stores Inc Judgment

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**U.S. District Court**

**District of Delaware**

**Notice of Electronic Filing**

The following transaction was entered on 9/25/2007 at 4:47 PM EDT and filed on 9/25/2007

**Case Name:** Institute for Disabilities Research and Training Inc. v. Wal-Mart Stores Inc

**Case Number:** 1:05-cv-176

**Filer:**

**Document Number:** 51

**Docket Text:**

JUDGMENT in favor of Institute for Disabilities Research and Training Inc. against Wal-Mart Stores Inc. Signed by Judge Gregory M. Sleet on 9/25/2007. (asw)

**1:05-cv-176 Notice has been electronically mailed to:**

Gregory A. Inskip ginskip@potteranderson.com, afowlkes@potteranderson.com, kkauffman@potteranderson.com  
Patricia Rose Uhlenbrock puhlenbrock@morrisjames.com

**1:05-cv-176 Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1079733196 [Date=9/25/2007] [FileNumber=449729-0]  
[a03249f04e3a51694d1a32a6f9b1058163c2b2c6c7b75d9d874c638125cbd8ee91c8  
68fd3672c24b27c684b73c6e8e2bc700df713fbf7a90cd9e3eeb29140de7]]

11/7/2007

**Inskip, Gregory A.**

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**From:** ded\_nefreply@ded.uscourts.gov  
**Sent:** Tuesday, September 25, 2007 4:57 PM  
**To:** ded\_ecf@ded.uscourts.gov  
**Subject:** Activity in Case 1:05-cv-00176-GMS Institute for Disabilities Research and Training Inc. v. Wal-Mart Stores Inc Terminated Case

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**U.S. District Court**

**District of Delaware**

**Notice of Electronic Filing**

The following transaction was entered on 9/25/2007 at 4:57 PM EDT and filed on 9/25/2007

**Case Name:** Institute for Disabilities Research and Training Inc. v. Wal-Mart Stores Inc

**Case Number:** 1:05-cv-176

**Filer:**

**WARNING: CASE CLOSED on 09/25/2007**

**Document Number:** No document attached

**Docket Text:**

CASE CLOSED (asw)

**1:05-cv-176 Notice has been electronically mailed to:**

Gregory A. Inskip ginskip@potteranderson.com, afowlkes@potteranderson.com, kkauffman@potteranderson.com  
Patricia Rose Uhlenbrock puhlenbrock@morrisjames.com

**1:05-cv-176 Notice has been delivered by other means to:**

11/7/2007